IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

WA.No. 2178 of 2007

(AGAINST THE JUDGEMENT IN OP.23823/2002 Dated 26/03/2007)

APPELLANT/PETITIONER:

AYMANAM MARIYATHURUTHY SERVICE
CO-OPERATIVE BANK LTD. NO.1173,
MARIYATHURUTHY P.O, KOTTAYAM -27.
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.P.SANKARANKUTTY NAIR
ADV. SRI.T.V.AJAYAKUMAR

RESPONDENTS/RESPONDENTS:
---

1. THE KERALA CO-OPERATIVE TRIBUNAL
THIRUVANANTHAPURAM.

2. M.CHANDRASEKHARAN NAIR,
POITHITTAYIL HOUSE,CHENNANICKADU, KOTTAYAM.

3. SENIOR CO-OPERATIVE INSPECTOR,
KUMARANALLOOR UNIT,OFFICE OF THE CO-OPERATIVE
ASST.REGISTRAR (GENERAL) KOTTAYAM.

BY SPECIAL GOVERNMENT PLEADER SMT. A.G. ANEETHA.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

.....

W.A. No. 2178 OF 2007

.....

Dated this the 19th September, 2007

J U D G M E N T

H.L. Dattu, C.J.:

The petitioner/appellant is a society registered under the provisions of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as 'Act').

2. In this appeal, the petitioner/appellant questions the correctness or otherwise of the orders passed by the learned single Judge in O.P. No.23823 of 2002 dated 26th March, 2007. The learned single Judge has rejected the Original Petition. Aggrieved by the order of the learned single Judge, the present appeal is filed.

3. The Appellant had raised a dispute before the Arbitrator under the provisions of Section 69 (1) of the Act. The Arbitrator, by order dated 21.10.1999 had rejected the dispute. The order passed by the Arbitrator reads as under:

> *"Advocate Abraham K. Jacob appeared for the petitioner. The trial commenced from 05.01.1991 onwards. Since the records were in the Vigilance Court, the trial could not be commenced till 15.06.1998. The trial was conducted on various days during the period from 03.03.1999 to 21.10.1999. Exhibit P1 to P67 were marked. As the petitioner Bank could not establish that the respondent was responsible for the incident which is the subject matter of the case, the above case is dismissed on 21.10.1999 at 3 p.m."*

4. Aggrieved by the order passed by the Arbitrator, the petitioner/appellant-Society had filed Appeal No. 32 of 2000 before the Kerala

Co-operative Tribunal, Thiruvananthapuram. By order dated 10th October, 2000, the Tribunal has rejected the appeal for non-prosecution. The order passed by the Tribunal reads as under:

> *"Appellant called. Absent. No representation even. Hence dismissed for default."*

5. After the dismissal of the appeal for non-prosecution, the petitioner/appellant-Society had filed an application for restoration of the appeal, viz., Restoration Application No.55 of 2000. The said application has also been rejected by the Tribunal by order dated 6th August, 2001, for non-prosecution. The order passed by the Tribunal reads as under:

> *"No representation for the petitioner. Hence petitioner called. Petitioner also is absent.*
>
> *In the result I dismiss this Restoration Application for default. No costs."*

6. Thereafter the petitioner/appellant-Society had filed one more application for restoration of dismissed application, in Restoration Application No.85 of 2001. The said application has also been rejected by the Tribunal by its order dated 10th September, 2001. The order passed by the Tribunal is as under:

> *"This is restoration application filed on second time in A.P.No. 32/2000. The appeal was being dismissed for default on 10.10.2000 and notice 12.12.2000 as averred in the affidavit Restoration*

Application 55/2000 filed on 08.11.2000 was also being dismissed for default on 06.08.2001. This application is filed to restore Restoration Application 55/2000. On a perusal of the records, it is seen that the appellant/petitioner was not at all diligent in prosecuting the appeal and only wanted to due that the Appeal on an application for restoration atleast is kept pending on file. I am not of the view that the culpable latches on the part of the appellant and his lawyer can be taken lightly so as to allow this application for restoration of the Restoration Application.

In the result, I dismiss this Restoration Application with however no order as to costs."

7. Aggrieved by the aforesaid order passed by the Tribunal, the petitioner/appellant-Society was before this court in O.P. 23823 of 2002 and the said Original Petition is rejected by the learned Single Judge by his order dated 26.3.2007.

8. The learned counsel for the petitioner/appellant-Society would submit, the learned single Judge was not justified in rejecting the Original Petition filed by the Society on the grounds mentioned in the impugned order. Therefore, the learned counsel requests us to interfere with the said order passed by the learned single Judge and to remand the matter to the Tribunal to restore the appeal filed by the petitioner/appellant-Society and to decide the same on merits by the Tribunal.

9. We are not inclined to accede the request made by the learned counsel for the petitioner/appellant-Society.

10. Rule 113 of the Kerala Co-operative Societies Rules 1969 (hereinafter referred to as ' Rules') provides for rejection of an appeal by the Tribunal ex parte. Rule 114 of the Rules provides for filing of an application for restoration of the appeal dismissed for default/non-prosecution and for restoration of the appeal, if for any reason, the Tribunal is satisfied with the explanation offered in the application for restoration. The relevant rules are extracted below:

> *"113. Hearing:-(1) Where on the date fixed for hearing or on any other date to which the hearing may be adjourned, any party does not appear when the proceedings is called on for hearing , the Tribunal may dispose of the proceedings ex-parte.*
>
> *(2) On the date fixed for hearing or on any other date to which the hearing may be adjourned, the appellant or applicant shall ordinarily be heard first in support of the appeal or application. The respondent, if necessary, shall be heard next and in such a case the party beginning shall be entitled to reply.*
>
> *114. Restoration of appeals and applications:-(1) Where a principal application is disposed of ex-parte any absentee party, if aggrieved, may apply to the Tribunal, within 30 days from the date of communication of the order, for restoring such proceeding to the file and where it is shown to the satisfaction of the Tribunal that he was prevented by sufficient cause from appearing when the proceeding was called on for hearing, the Tribunal shall restore the same and proceed with*

it. Provided that where the other party had appeared at the hearing such party shall be given notice and an opportunity of being heard before the order for restoration of the appeal or application is made.

(2) The provisions of these rules relating to appeals or applications shall mutatis mutandis apply to application for restoration. "

11. In the instant case, since the petitioner/appellant-Society was not present before the Tribunal when the matter was called for hearing, the Tribunal, in exercise of its powers under Rules 113 of the Rules, has rejected the appeal. Rule 114 of the Rules authorises the appellant, whose appeal was rejected for non-prosecution/default, to make an application for restoration of the appeal. The said rule also authorises the Tribunal to restore the appeal, if the Tribunal is satisfied with the reason that the appellant was prevented by sufficient cause from appearing when the proceeding was called for hearing.

12. The appeal filed by the petitioner society is posted before this court for admission. We asked the learned counsel appearing for the appellant Society to furnish us the application filed by the petitioner society to satisfy ourselves whether the petitioner society has made out sufficient grounds for restoration of the appeal. The learned counsel for the appellant pleads his inability to produce that application.

13. In the instant case, as we have already noticed, that on the date when the matter was posted for hearing before the Tribunal, neither the appellant nor its counsel was present before the Tribunal. The Tribunal, in

exercise of its powers under Rules 113 of the Rules has rejected the appeal for non-prosecution/default. The said appeal could have been restored by the Tribunal, if reasonable explanation was shown by the appellant in the application filed for restoration of the appeal. Whether sufficient cause has been shown or not in the application for restoration, to the satisfaction of the Tribunal for the absence of the appellant at the time when the proceeding was called for hearing, can be ascertained only if the application for restoration filed before the Tribunal is produced before us. Since that application is not filed/produced before us, we are of the opinion that the Tribunal was justified in rejecting not only the appeal but also the application for restoration of the appeal.

11. In view of the above, for the reasons other than the reasons mentioned by the learned single Judge, the Writ Appeal requires to be rejected and it is rejected.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/DK.